

## REMARKS

In view of the above amendments and following remarks, further reexamination and reconsideration are respectfully requested.

Initially, it is again noted that, in paragraph 2 on page 2 of the Office Action dated December 4, 2002, the Examiner refused formal consideration of the Information Disclosure Statement filed on December 5, 2000 due to the Examiner's assertion that the non-English language references are not accompanied by English language translations. The Applicant respectfully traverses the Examiner's position and submits that the Examiner's failure to consider the Information Disclosure Statement is improper since a concise explanation of the references is contained on pages 2-3 of the specification (as noted on page 3 of the Information Disclosure Statement) in compliance with C.F.R. § 1.98(a)(3)(i). Moreover, it is noted that reference JP 2804630 corresponds to English language reference WO 97/07509 as also indicated on page 3 of the Information Disclosure Statement. Accordingly, since the Applicant has satisfied the requirements for non-English language references as noted above, the Examiner is kindly requested to formally consider the references cited in the Information Disclosure Statement and provide the Applicant with an Examiner initialed form PTO-1449 indicating formal consideration of the references cited therein. **IT IS NOTED THAT THIS IS THE SECOND REQUEST.**

Next, by this Amendment, it is noted that each of claims 1, 3-5, and 15 has been amended. Accordingly, it is submitted that claims 1-24 are currently pending in this application.

It is noted that the Examiner has rejected claims 1-12 and 15-23 under 35 U.S.C. § 102(e) as being anticipated by Downs et al. (USPN: 6,226,618).

Without intending to acquiesce to the Examiner's aforementioned art rejection and in order to expedite allowance of the present application, the Applicant has amended each of independent claims 1 and 15 so as to more clearly distinguish the presently claimed invention from the Downs et al. reference relied upon by the Examiner.

Accordingly, it is strongly submitted that the present invention, at least as embodied by newly amended independent claims 1 and 15, clearly patentably distinguishes over the Downs et al. reference relied upon by the Examiner for at least the following reasons.

It is noted that the present invention, as recited in each of newly amended independent claims 1 and 15 of the present application, provides a recording medium and recording method for storing digital data to be read/updated by a data recording and reproducing device, wherein reproduction control information is provided which is used to determine content data to be reproduced, the reproduction control information including reproduction frequency parameters each of which determines a reproduction frequency of the content data, and wherein the reproduction frequency parameters include attribute data of the content data, and the reproduction frequency of the content data is derived from the attribute data.

Thus, as described on page 15 (line 5) - page 16 (line 15) of the specification and as shown in Figure 2 of the present application, the reproduction frequency during random reproduction of the content data is determined from attribute data such as, for example, content data recording date information 22a, content data latest reproduction date information 22b, and content data reproduction count information 22c.

It is strongly submitted that the above discussed features of the present invention are encompassed within the limitations of each of newly amended independent claims 1 and 15 of the present application. Further, it is submitted that the above limitations are not disclosed, suggested, or rendered obvious by the Downs et al. reference relied upon by the Examiner.

Particularly, it is submitted that the Downs et al. reference fails to disclose or suggest that the reproduction frequency of content data is derived or determined from attributes of the content data as described above and as now claimed in each of newly amended independent claims 1 and 15 of the present application.

As reflected in paragraphs 5 and 20 on pages 2 and 8, respectively, of the Office Action, the Examiner has cited column 3 (lines 40-56) of the Downs et al. reference for allegedly teaching the features of the present invention as recited in claims 1 and 15 of the present application. However, it is noted that column 3 (line 40-56) of the Downs et al. reference describes the summary of the

invention as comprising a method and apparatus for securely providing data to a user's system using a public/private data key technique. Moreover, upon an analysis of remaining portions of the Downs et al. reference, no teaching could be found for disclosing or suggesting the features of the present invention as claimed in each of independent claims 1 and 15 of the present application.

Particularly, not only does the Downs et al. reference fail to disclose or suggest providing reproduction control information which is used for determining content data to be reproduced, as claimed in each of independent claims 1 and 15 of the present application, the Downs et al. reference also fails to disclose or suggest reproduction frequency parameters which include attribute data of the content data, and wherein the reproduction frequency of the content data is derived from the attribute data, as now recited in each of newly amended independent claims 1 and 15 of the present application.

Next, it is noted that the Examiner has rejected claims 13-14 and 24 under 35 U.S.C. § 102(e) as being anticipated by Downs et al. (USPN: 6,226,618).

The Applicant respectfully traverses the Examiner's aforementioned prior art rejection and submits that the present invention, at least as claimed in independent claims 13 and 24 of the present application, is not disclosed or suggested by the Downs et al. reference relied upon by the Examiner for at least the following reasons.

According to the present invention as particularly recited in each of independent claims 13 and 24 of the present application, a reproduction control information collection system and method are provided in which a user system transmits user reproduction control information indicative of the user's preferences of content data over the network to an information provider system, wherein the information provider system subsequently transmits the user's reproduction control information together with an ID uniquely identifying the user to a content merchandiser system. The content merchandiser system then issues a password unique to the ID and transmits the password and ID to the information provider system which, in turn, transmits the password and ID to the user system. Upon receiving the password and ID, the user system is then able to obtain a bonus from the content merchandiser system by presenting the password and ID.

It is adamantly submitted that the above described features of the present invention, as claimed in each of independent claims 13 and 24 of the present application, is not disclosed or suggested by the Downs et al. reference.

As reflected in paragraphs 17 and 30 on pages 6 and 11, respectively, of the Office Action, the Examiner has again cited column 3 (lines 40-56) of the Downs et al. reference for allegedly teaching the features of the present invention recited in independent claims 13 and 24. However, it is again emphasized that column 3 (line 40-56) of the Downs et al. reference describes the summary of the invention as comprising a method and apparatus for securely providing data to a user's system using a public/private data key technique.

However, it is submitted that such a public/private data key encryption technique fails to teach or suggest the features of the present invention wherein a user's preference information is sent to an intermediate or middle party which then, in turn, transmits the user preference information to a third party who then returns a password to the intermediate party to be given to the user who can then claim a bonus from the third party, as essentially recited in independent claims 13 and 24 of the present application.

The Examiner is kindly requested to refer to Figure 1 and columns 9-12 of the Downs et al. reference to fully understand that the Downs et al. invention is directed towards a Secure Digital Content Electronic Distributing System 100. Particularly, it is noted that this system provides Content Providers (CP) 101, Electronic Digital Content Stores (EDCS) 103, Clearinghouses (Ch) 105, and an End User (EU) 109. As described in detail in the description contained in columns 9-12, the Content Providers (CP) are owners or distributors of original content data, the Electronic Digital Content Stores (EDCS) package content data into Secure Containers and deliver them to consumers or businesses, and the Clearinghouses (Ch) provide licensing authorization and record keeping of all transactions and supply decryption keys for content to appropriate End Users (EU) when verifications are satisfied.

Thus, based on the foregoing and based on a study of the teachings of the Downs et al. reference, it is submitted that the Downs et al. reference fails to disclose or suggest the features of

the present invention as claimed in each of independent claims 13 and 24 of the present application. Particularly, it is submitted that no mention is made in the Downs et al. reference of either user preference information or that such user preference information is passed to an information provider system and then to a content merchandiser system. The Downs et al. reference further fails to provide a teaching of a content merchandiser providing a password for an ID supplied by an information provider, both the ID and password being supplied to a user, and fails to teach or suggest the user as presenting the ID and password to the content merchandiser in return for a bonus to the user.

Thus, the Applicant submits that the Downs et al. reference fails to disclose or suggest a reproduction control information collection system and method being provided in which a user system transmits user reproduction control information indicative of the user's preferences of content data over the network to an information provider system, wherein the information provider system subsequently transmits the user's reproduction control information together with an ID uniquely identifying the user to a content merchandiser system, the content merchandiser system then issuing a password unique to the ID and transmitting the password and ID to the information provider system which, in turn, transmits the password and ID to the user system, and wherein upon receiving the password and ID, the user system is then able to obtain a bonus from the content merchandiser system by presenting the password and ID, as recited in each of independent claims 13 and 24 of the present application.

Lastly, the Applicant would like to point out to the Examiner that under a 35 U.S.C. 102(e) rejection based on the Downs et al. patent, each and every limitation appearing in claims 1-24 of the present application must either be expressly described in, or found under the principles of inherency, in the Downs et al. patent. See *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983) and *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984). Thus, since the Applicant has asserted that the Downs et al. patent does not describe, either expressly or inherently, each and every limitation appearing in claims 1-24 of the present application, in the event that the Examiner maintains the prior art rejection, the Examiner is kindly requested to specifically identify the particular portions of the Downs et al. reference that the Examiner is relying upon for teaching each of the features recited in claims 1-24 of the present application.

For the foregoing reasons, it is submitted that each of independent claims 1, 13, 15, and 24, as well as claims 2-12, 14, and 16-23 dependent therefrom clearly are allowable.

In view of the foregoing, it is submitted that the present application now in fact clearly is in condition for allowance and the Examiner therefore is requested to pass this case to issue.

In the event, however that the Examiner has any comments or suggestions of a nature necessary to place this case in condition for allowance, then the Examiner is requested to contact Applicants' undersigned attorney by telephone to promptly resolve any such matters.

Respectfully submitted,

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